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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

Arizona Corporation Commission

**DOCKETED**

FEB 7 2019

**DOCKETED BY**

ROBERT "BOB" BURNS – Chairman  
ANDY TOBIN  
BOYD DUNN  
SANDRA D. KENNEDY  
JUSTIN OLSON

In the Matter of:

DOCKET NO. S-20984A-16-0315

COVERLUGG LLC, an Arizona limited liability company,

BIRDIE MEDIA LLC, an Arizona limited liability company, and

GREGORY J. SANCHEZ and JILL K. SANCHEZ, husband and wife,

Respondents.

77067  
DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

DATES OF HEARING:

May 14, 15 and 16, 2018

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Brian D. Schneider

APPEARANCES:

Mr. Gregory J. Sanchez, *pro per*, and

Mr. Michael E. Shaw and Ms. Wendy L. Coy,  
Staff Attorneys, on behalf of the Securities  
Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

**I. Procedural History**

On September 9, 2016, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative Action ("Notice") against CoverLugg LLC ("CoverLugg"); FoneFace LLC ("FoneFace"); Birdie Media LLC ("Birdie Media"); and Gregory J. Sanchez ("Sanchez") and Jill K. Sanchez ("Respondent Spouse") (collectively "Initial Respondents"), in which the Division alleged violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of investment contracts and/or

1 promissory notes.

2 Respondent Spouse is joined in the action pursuant to A.R.S. § 44-2031(C) solely for the  
3 purpose of determining the liability of the marital community.

4 Initial Respondents were duly served with copies of the Notice.

5 On October 17, 2016, Sanchez filed a Request for Hearing pursuant to Arizona Administrative  
6 Code ("A.A.C.") R14-4-306.

7 On October 18, 2016, by Procedural Order, a pre-hearing conference was scheduled to  
8 commence on November 21, 2016.

9 On November 21, 2016, the pre-hearing conference was held as scheduled. The Division  
10 appeared through counsel. Sanchez appeared *pro per*. The scheduling of a hearing date was discussed.

11 Also on November 21, 2016, by Procedural Order, a hearing was scheduled to commence on  
12 April 17, 2017. The Division and Initial Respondents were ordered to exchange copies of their Witness  
13 Lists and Exhibits by March 17, 2017.

14 On March 16, 2017, Sanchez filed a Request for Continuance of Hearing due to family  
15 emergencies. Sanchez requested that the hearing be continued to a date after September 1, 2017.

16 On March 23, 2017, the Division filed a Response to Sanchez's Request for Continuance,  
17 stating that it had no objection.

18 On March 24, 2017, by Procedural Order, the hearing was rescheduled to commence on October  
19 23, 2017.

20 On April 17, 2017, the Division filed an Advisement on Information of Respondents' Change  
21 of Address.

22 On September 26, 2017, the Hearing Division filed a Memorandum to docket a letter sent by  
23 Sanchez. In his letter, Sanchez requested a continuance of the October 23, 2017, hearing due to ongoing  
24 family emergencies. Sanchez requested that the hearing be scheduled for a date after March 30, 2018.

25 On October 2, 2017, the Division filed a Response to Respondent's Motion to Continue the  
26 Administrative Hearing, agreeing to a continuance until January 2018. The Division stated that it had  
27 no objection to a continuance but requested that the hearing be set to commence in January 2018.

28 On October 6, 2017, by Procedural Order, the hearing was rescheduled to commence on January

1 22, 2018.

2 On December 28, 2017, the Hearing Division filed a Memorandum to docket a letter sent by  
3 Sanchez. In his letter, Sanchez requested a continuance of the January 22, 2018, hearing due to ongoing  
4 family emergencies. Sanchez requested that the hearing be scheduled for a date after March 30, 2018.

5 On January 3, 2018, the Division filed a Response to Respondent's Motion to Continue the  
6 Administrative Hearing, stating the Division did not have an objection to a continuance. The Division  
7 further stated that due to the number of continuances, any further requests for a continuance would be  
8 opposed.

9 On January 4, 2018, by Procedural Order, the hearing was rescheduled to commence on May  
10 14, 2018.

11 On April 9, 2018, the Division filed a Motion to Allow Telephonic Testimony to allow Alex  
12 Espalin to testify telephonically at the hearing. The Division indicated that Mr. Espalin resides out of  
13 state and contended that requiring him to appear in person would be prohibitively burdensome.

14 On April 26, 2018, by Procedural Order, the Division's Motion to Allow Telephonic Testimony  
15 for Alex Espalin was granted.

16 On May 14, 2018, the hearing was held as scheduled. The Division appeared through counsel.  
17 Sanchez appeared *pro per*. The Division's oral motion to dismiss FoneFace as a Respondent and amend  
18 the caption to remove FoneFace as a listed Respondent was granted.<sup>1</sup> The hearing continued on May  
19 15, 2018, and concluded on May 16, 2018. At the end of the hearing, the matter was taken under  
20 advisement pending the submission of closing briefs.

21 On July 2, 2018, the Division filed its Post-Hearing Brief.

22 On August 23, 2018, the Hearing Division filed a Memorandum to docket Sanchez's Post  
23 Hearing Brief Response dated August 14, 2018.

24 On September 10, 2018, the Division filed its Post-Hearing Reply Brief.

## 25 II. Brief Summary

26 This is an enforcement action brought against Respondents for alleged violations of the  
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28 <sup>1</sup> CoverLugg, Birdie Media, Sanchez and Respondent Spouse are collectively referred to as "Respondents."

1 registration and anti-fraud provisions of the Act. The Division contends that Respondents sold  
2 unregistered securities and acted as salesmen or dealers without being registered by the Commission,  
3 in violation of A.R.S. §§ 44-1841 and 44-1842. Further, the Division contends that Respondents  
4 committed fraud by making misrepresentations to their investors, in violation of A.R.S. § 44-1991.

5 In 2010, Sanchez and partner Troy Goins created CoverLugg with the purpose of designing,  
6 manufacturing, marketing, and selling customized covers and/or lids that wrap around luggage and  
7 travel bags. The Division alleges that Sanchez and CoverLugg offered and sold securities in Arizona  
8 in the form of investment contracts to fourteen (14) investors. The Division requests that Sanchez and  
9 CoverLugg be ordered to pay restitution in the amount of \$1,143,090, plus interest, and an  
10 administrative penalty of \$150,000.

11 In 2012, Sanchez created FoneFace with the purpose of designing, manufacturing, marketing,  
12 and selling stretchable neoprene covers for smart phones, hand held devices, laptops, and computer  
13 tablets. The Division alleges that Sanchez offered and sold securities in Arizona in the form of  
14 investment contracts or promissory notes to eleven (11) investors. The Division requests that Sanchez  
15 be ordered to pay restitution in the amount of \$678,500, plus interest.

16 In 2014, Sanchez created Birdie Media with the purpose of designing, manufacturing,  
17 marketing, and selling golf promotional products. The Division alleges that Sanchez and Birdie Media  
18 offered and sold securities in Arizona in the form of investment contracts to six (6) investors. The  
19 Division requests that Sanchez and Birdie Media be ordered to pay restitution in the amount of  
20 \$185,000, plus interest, and an administrative penalty of \$75,000.

### 21 **III. Testimony**

#### 22 **A. Alexander Espalin**

23 Mr. Espalin testified that he met Sanchez during a taping of the show *Shark Tank* in September  
24 2011.<sup>2</sup> Mr. Espalin testified that Sanchez indicated that he had secured a patent for his CoverLugg  
25 product and further testified that he later learned that the patents were filed under Sanchez's name  
26 rather than being assigned to the company.<sup>3</sup>

27 \_\_\_\_\_  
28 <sup>2</sup> Tr. 44:13-20.

<sup>3</sup> Tr. 45:15-17; Tr. 46:14-47:24; Tr. 64:2-65:1; Exh. S-48.



1 Mr. Espalin testified that Sanchez sent him an early investor prospectus and financial projection  
 2 for CoverLugg, which indicated projected sales of nearly \$4.7 million for 2012, growing over the  
 3 subsequent three years to over \$50 million.<sup>4</sup> Mr. Espalin testified that he inquired about investing with  
 4 CoverLugg and that Sanchez represented that he was raising investment capital to cover the cost of  
 5 inventory.<sup>5</sup>

6 Mr. Espalin testified that Mr. Goins was identified on the CoverLugg website as a cofounder  
 7 of the company.<sup>6</sup> Mr. Espalin further testified that CoverLugg's Articles of Organization, dated August  
 8 30, 2010, lists Sanchez and Mr. Goins as managers.<sup>7</sup>

9 Mr. Espalin testified that neither Sanchez nor Mr. Goins disclosed to him that Mr. Goins had a  
 10 federal conviction for fraud prior to Mr. Espalin investing in CoverLugg.<sup>8</sup>

11 Mr. Espalin testified that on October 11, 2011, he entered into a Share Purchase Agreement  
 12 with Sanchez wherein Mr. Espalin agreed to invest \$225,000 in exchange for 80,000 shares of stock,  
 13 or an 8% membership interest in CoverLugg, with three payments of \$75,000 to be made over the  
 14 course of several months.<sup>9</sup> Mr. Espalin testified that Sanchez was selling preferred shares to his  
 15 investors, meaning that "the first profits out of the company were supposed to be returned to the  
 16 investors."<sup>10</sup>

17 Mr. Espalin testified that on October 15, 2011, he made an initial investment in CoverLugg of  
 18 \$75,000.<sup>11</sup> Mr. Espalin testified that, based on representations by Sanchez, he expected to start seeing  
 19 some profit dividends within 9 to 12 months.<sup>12</sup>

20 Mr. Espalin testified that on December 23, 2009, a judgment was issued against Sanchez and  
 21 Respondent Spouse in the amount of \$2,082.74.<sup>13</sup>

22 Mr. Espalin testified that on December 21, 2009, a judgment was signed against Sanchez and  
 23

24 <sup>4</sup> Tr. 50:11-51:3; Exh. S-126.

25 <sup>5</sup> Tr. 49:22-50:7; Tr. 51:15-54:1; Exh. S-111.

26 <sup>6</sup> Tr. 54:6-7.

27 <sup>7</sup> Tr. 63:8-15; Exh. S-2.

28 <sup>8</sup> Tr. 63:18-22; Exh. S-99.

<sup>9</sup> Tr. 54:11-16; Tr. 56:17-20; Tr. 56:25-57:10; Tr. 170:3-6; Exh. S-52.

<sup>10</sup> Tr. 55:10-12.

<sup>11</sup> Tr. 59:7-9; Exh. S-23.

<sup>12</sup> Tr. 54:17-56:4.

<sup>13</sup> Tr. 61:11-16; Tr. 61:23-62:1; Exh. S-93.

Respondent Spouse in the amount of \$54,190.51.<sup>14</sup>

Mr. Espalin testified that on June 14, 2010, a judgment was issued against Sanchez and Respondent Spouse in the amount of \$591.80.<sup>15</sup>

Mr. Espalin testified that on June 27, 2011, a judgment was issued against Sanchez and Respondent Spouse in the amount of \$7,205.82.<sup>16</sup>

Mr. Espalin testified that Sanchez did not disclose to him the prior judgments issued against Sanchez before Mr. Espalin invested in CoverLugg.<sup>17</sup>

Mr. Espalin testified that in November 2011, through various emails between Sanchez and a *Shark Tank* representative, Mr. Espalin discovered that Sanchez had misrepresented the deal he had procured with *Shark Tank*.<sup>18</sup> Mr. Espalin testified:

what [Sanchez] had represented to me, was that the Sharks had invested \$400,000 in exchange for 10 percent ownership of just CoverLugg, which implied a company valuation of \$4 million. And now what I learned through this email was the valuation was not \$4 million but was, in fact, \$1.6 million for both companies [CoverLugg and Cooler Concepts, LLC], not just CoverLugg.<sup>19</sup>

Mr. Espalin testified that on January 15, 2012, he invested an additional \$75,000 in CoverLugg and executed an "Amendment to Share Purchase Agreement" with Sanchez.<sup>20</sup> Mr. Espalin testified that the amendment added a condition that gave Mr. Espalin the right to offer his shares back to the company in exchange for his original investment plus a nominal loan fee.<sup>21</sup>

Mr. Espalin testified that on April 11, 2012, he invested an additional \$75,000 in CoverLugg, bringing his total investment to \$225,000.<sup>22</sup>

Mr. Espalin testified that on April 12, 2012, a judgment was issued against Sanchez and Respondent Spouse in the amount of \$30,722.01.<sup>23</sup> Mr. Espalin further testified that Sanchez did not

<sup>14</sup> Tr. 60:14-61:4; Exh. S-90A.

<sup>15</sup> Tr. 61:6-10; Tr. 61:23-62:1; Exh. S-91A.

<sup>16</sup> Tr. 61:17-62:1; Exh. S-95.

<sup>17</sup> Tr. 59:24-60:2; Tr. 62:2-5.

<sup>18</sup> Tr. 65:2-23; Tr. 69:4-70:21; Exh. S-112.

<sup>19</sup> Tr. 70:25-71:6.

<sup>20</sup> Tr. 59:9-11; Tr. 79:3-8; Exhs. S-23 and S-53.

<sup>21</sup> Tr. 80:9-17.

<sup>22</sup> Tr. 85:6-8; Exh. S-23.

<sup>23</sup> Tr. 84:2-13; Exh. S-94.

1 disclose this judgment to him.<sup>24</sup>

2 Mr. Espalin testified that on June 15, 2012, he and Sanchez executed "Amendment #2 to  
3 CoverLugg LLC Share Purchase Agreement," which extended the deadline to call the note and receive  
4 payment by one month.<sup>25</sup>

5 Mr. Espalin testified that on July 12, 2012, he and Sanchez executed "Amendment #3 to  
6 CoverLugg LLC Share Purchase Agreement," which extended the deadline to call the note and receive  
7 payment by three months.<sup>26</sup>

8 Mr. Espalin testified that on August 18, 2012, he signed CoverLugg's Operating Agreement.<sup>27</sup>

9 Mr. Espalin testified that on September 12, 2012, he sent Sanchez a letter notifying him of Mr.  
10 Espalin's intent to sell his shares in CoverLugg back to the company and recoup all his initial  
11 investment plus the nominal loan fee.<sup>28</sup> Mr. Espalin testified that Sanchez responded that the company  
12 was out of money.<sup>29</sup>

13 Mr. Espalin testified that he questioned Sanchez about where the money was going, because  
14 Mr. Espalin and other CoverLugg investors had not received any recent financial statements or had  
15 access to CoverLugg's financial records or bank accounts.<sup>30</sup> Mr. Espalin testified that Sanchez  
16 represented that all the money was spent on inventory and that Sanchez stopped maintaining the books  
17 because he could not afford to keep the bookkeeper.<sup>31</sup>

18 Mr. Espalin testified that on May 1, 2013, he made a \$50,000 loan to FoneFace.<sup>32</sup> Mr. Espalin  
19 testified that Sanchez indicated that he was going to start up a new company and that the loan was to  
20 fulfill a significant purchase order that Sanchez had secured with Justice, a national retail chain with  
21 "nearly a thousand stores."<sup>33</sup> Mr. Espalin further testified that he was supposed to receive interest on  
22 the loan.<sup>34</sup> Mr. Espalin testified that, as of February 28, 2014, he had an equity interest in FoneFace of

23 <sup>24</sup> Tr. 84:17-20.

24 <sup>25</sup> Tr. 82:24-83:24; Exh. S-54.

25 <sup>26</sup> Tr. 85:13-86:16; Exh. S-55.

26 <sup>27</sup> Tr. 87:2-18; Exh. S-14C.

27 <sup>28</sup> Tr. 88:3-12; Tr. 90:1-3; Exh. S-56.

28 <sup>29</sup> Tr. 88:13-20.

<sup>30</sup> Tr. 89:5-15; 93:24-94:16.

<sup>31</sup> Tr. 89:15-17; Tr. 94:10-13.

<sup>32</sup> Tr. 97:11-21; Exh. S-66.

<sup>33</sup> Tr. 96:21-97:10.

<sup>34</sup> Tr. 97:11-15.

1 37,223 preferred shares and 200,000 common shares, for a total number of 237,223 shares.<sup>35</sup>

2 Mr. Espalin testified that on May 4, 2013, he and Sanchez executed "Amendment #4 to  
3 CoverLugg LLC Share Purchase Agreement."<sup>36</sup> Mr. Espalin testified that the purpose of this  
4 amendment was to "[clean] up the agreement and [convert] it to just the straight-up loan that [he] had  
5 made to the company."<sup>37</sup> Mr. Espalin further testified that Sanchez agreed to buy back 40,000 of Mr.  
6 Espalin's 80,000 shares in CoverLugg for \$246,000, with full payment due on April 30, 2014.<sup>38</sup>

7 Mr. Espalin testified that on May 6, 2013, he and Sanchez executed an employment agreement,  
8 wherein Mr. Espalin "essentially assume[d] the CEO position of CoverLugg."<sup>39</sup>

9 Mr. Espalin testified that he read an article titled *Federal Jury Finds Arizona Home Builder*  
10 *Guilty of Bank Fraud, Conspiracy in Mortgage Scam* ("Article"), published by the Phoenix Business  
11 Journal on June 5, 2014, which detailed Sanchez's and others' involvement in a local mortgage fraud  
12 scheme.<sup>40</sup> Mr. Espalin testified that he first learned of Sanchez's prior conviction after reading the  
13 Article.<sup>41</sup>

14 Mr. Espalin testified that after he read the Article, he and Mike Basten, another investor and  
15 chairman of CoverLugg, unsuccessfully tried to get Sanchez to remove himself from CoverLugg and  
16 assign the patents to the company.<sup>42</sup>

17 Mr. Espalin testified that in 2014, or late 2013, he reviewed the financial statements and bank  
18 records for CoverLugg and FoneFace.<sup>43</sup> Mr. Espalin testified that he saw various things regarding  
19 CoverLugg that alarmed him: large transfers of money to an entity called Sandbox, which Sanchez  
20 indicated was a marketing agency but which Mr. Espalin later learned was a company owned by  
21 Sanchez to which Sanchez was funneling funds; payments that Sanchez issued to himself in various  
22 forms with no income tax withholding; large withdrawals from the ATM; and payments for a cell phone  
23

24 <sup>35</sup> Tr. 100:22-101:6; Exh. S-58C at ACC000266.

25 <sup>36</sup> Tr. 94:17-23; Exh. S-57.

26 <sup>37</sup> Tr. 94:24-95:8.

27 <sup>38</sup> Tr. 95:9-14; Exh. S-57.

28 <sup>39</sup> Tr. 95:22-96:1; Exh. S-113.

<sup>40</sup> Tr. 102:2-11; Exh. S-100.

<sup>41</sup> Tr. 103:2-5.

<sup>42</sup> Tr. 103:6-104:9.

<sup>43</sup> Tr. 107:15-23.

1 plan which appeared to be for family coverage.<sup>44</sup>

2 Mr. Espalin testified that regarding FoneFace, he found that Sanchez had written himself a  
3 check that was out of cycle for a payroll check.<sup>45</sup> Mr. Espalin testified that when he confronted Sanchez  
4 about the check, Sanchez stated that he felt like he had been working really hard, that the company's  
5 success was because of him, and that he felt like he deserved more.<sup>46</sup> Mr. Espalin testified that he was  
6 "completely dumbfounded...that anyone would offer that as rationale for stealing from the  
7 company."<sup>47</sup>

8 Mr. Espalin testified that he filed a suit against CoverLugg, Sanchez, and Respondent Spouse  
9 concerning the default of his loan and that he was awarded a default judgment on March 14, 2016.<sup>48</sup>  
10 Mr. Espalin further testified that he was successful in securing the CoverLugg patents.<sup>49</sup>

11 Mr. Espalin testified that Sanchez never told him, or implied, that the patents did not belong to  
12 CoverLugg.<sup>50</sup>

13 Mr. Espalin testified that CoverLugg's Operating Agreement contains a clause that allows any  
14 member the right to examine the company's books and records.<sup>51</sup>

15 Mr. Espalin testified that CoverLugg's Operating Agreement contains a clause that requires  
16 approval of ¾ of the Management Committee to make major decisions, but that upon speaking with  
17 each member of the Management Committee, Mr. Espalin learned that there had been no meetings or  
18 decisions.<sup>52</sup>

19 **B. Douglas Hebert**

20 Mr. Hebert testified that he was introduced to Sanchez by a mutual friend at a NASCAR race  
21 in March 2011.<sup>53</sup> Mr. Hebert further testified that approximately one month later he visited  
22 CoverLugg's warehouse in Chandler on multiple occasions and decided to invest in the company.<sup>54</sup>

23 <sup>44</sup> Tr. 108:1-25.

24 <sup>45</sup> Tr. 109:2-8.

25 <sup>46</sup> Tr. 109:9-15.

26 <sup>47</sup> Tr. 109:15-17.

27 <sup>48</sup> Tr. 114:5-10; Tr. 115:1-6; Exh. S-89A.

28 <sup>49</sup> Tr. 114:19-24; Tr. 115:7-11; Exhs. S-89B and S-89C.

<sup>50</sup> Tr. 129:3-16.

<sup>51</sup> Tr. 137:12-21; Exh. S-14C.

<sup>52</sup> Tr. 146:13-147:12; Exh. S-14C.

<sup>53</sup> Tr. 177:6-9.

<sup>54</sup> Tr. 179:2-24.

1 Mr. Hebert testified that on October 28, 2011, he entered into a Unit Purchase Agreement with Sanchez  
 2 wherein Mr. Hebert agreed to invest \$25,000 in exchange for 25,000 units, or a 2.5% membership  
 3 interest in CoverLugg.<sup>55</sup> Mr. Hebert further testified that he wrote a check to CoverLugg on May 4,  
 4 2011.<sup>56</sup>

5 Mr. Hebert testified that prior to investing, he had thought that the patents for CoverLugg were  
 6 in the company's name.<sup>57</sup> Mr. Hebert further testified that prior to investing it was not disclosed to  
 7 him that Sanchez had several judgments ordered against him or that Mr. Goins, whom Mr. Hebert  
 8 thought was the Vice President of CoverLugg, had a felony conviction for fraud.<sup>58</sup>

9 Mr. Hebert testified that Sanchez never told him or implied that the patents did not belong to  
 10 CoverLugg, but that he assumed that to be the case.<sup>59</sup>

11 **C. Joseph J. Maturo, Jr.**

12 Mr. Maturo testified that he met Sanchez in early 2013 when he visited FoneFace's offices in  
 13 Chandler.<sup>60</sup> Mr. Maturo testified that FoneFace's Articles of Organization, dated May 23, 2012, lists  
 14 Sanchez as the manager.<sup>61</sup>

15 Mr. Maturo testified that he decided to initially invest in FoneFace to help fulfill the Justice  
 16 Purchase Order.<sup>62</sup> Mr. Maturo testified that he and Sanchez executed a Unit Purchase Agreement, and  
 17 that on April 26, 2013, and May 1, 2013, he invested a total of \$50,000 in exchange for 33,300 units,  
 18 or a 3.33% membership interest in FoneFace.<sup>63</sup> Mr. Maturo testified that his investment was described  
 19 as a "preferred membership interest."<sup>64</sup>

20 Mr. Maturo identified several judgments entered against Sanchez and Respondent Spouse: a  
 21 January 4, 2010, judgment in the amount of \$54,190.51; a June 14, 2010, judgment; a September 30,  
 22 2009, judgment, in the amount of \$4,726.92; a November 1, 2010, judgment, in the amount of

23  
 24 <sup>55</sup> Tr. 184:24-186:11; Exh. S-16.

<sup>56</sup> Tr. 185:23-25; Exh. S-26.

<sup>57</sup> Tr. 181:22-182:9.

<sup>58</sup> Tr. 183:17-184:14.

<sup>59</sup> Tr. 189:1-12.

<sup>60</sup> Tr. 217:11-218:11.

<sup>61</sup> Tr. 220:16-23; Exh. S-3A.

<sup>62</sup> Tr. 227:9-228:8.

<sup>63</sup> Tr. 232:12-233:3; Tr. 234:17-25; Exhs. S-59A and S-65.

<sup>64</sup> Tr. 228:11-14.



1 \$4,726.92; a April 12, 2012, judgment, in the amount of \$30,722.01; and a July 8, 2011, judgment, in  
2 the amount of \$7,205.82.<sup>65</sup>

3 Mr. Maturo testified that Sanchez did not disclose to him any judgments filed against Sanchez  
4 prior to Mr. Maturo's decision to invest in FoneFace.<sup>66</sup>

5 Mr. Maturo testified that on August 16, 2013, Sanchez pled guilty to violating 18 U.S.C. §§  
6 371 and 1344 (Conspiracy to commit bank fraud), a Class D felony.<sup>67</sup>

7 Mr. Maturo testified that he and Sanchez executed a Unit Purchase Agreement and that on  
8 November 1, 2013, he invested \$100,000 in exchange for 44,643 units, or a 4.0% membership interest  
9 in FoneFace.<sup>68</sup> Mr. Maturo further testified that Sanchez did not disclose prior judgments against him  
10 or his conviction for fraud at or near the time Mr. Maturo made this investment.<sup>69</sup>

11 Mr. Maturo testified that on February 25, 2014, he and Sanchez executed a Security Agreement  
12 and a Secured Promissory Note for Mr. Maturo's loan of \$80,000 to FoneFace.<sup>70</sup> Mr. Maturo further  
13 testified that according to the terms of the Note he was supposed to receive interest at the rate of 5%  
14 per year.<sup>71</sup>

15 Mr. Maturo testified that on April 17, 2014, he and Sanchez executed a Security Agreement  
16 and a Secured Promissory Note for his loan of \$23,000 to FoneFace.<sup>72</sup> Mr. Maturo further testified  
17 that Sanchez did not disclose prior judgments against him or his conviction for fraud at or near the time  
18 Mr. Maturo made this investment.<sup>73</sup>

19 Mr. Maturo testified that on June 2, 2014, he and Sanchez executed a Security Agreement and  
20 a Secured Promissory Note for his loan of \$48,000 to FoneFace.<sup>74</sup>

21 Mr. Mautiro testified that on May 28, 2014, a judgment was filed against CoverLugg in the  
22

23 \_\_\_\_\_  
24 <sup>65</sup> Tr. 240:6-241:3; Tr. 241:4-14; Tr. 242:5-20; Tr. 243:8-16; Tr. 244:4-11; Exhs. S-90A, S-91A, S-92, S-93, S-94, and S-95.

25 <sup>66</sup> Tr. 244:12-18; Tr. 245:3-7.

26 <sup>67</sup> Tr. 247:10-25; Exh. S-98C.

27 <sup>68</sup> Tr. 249:20-250:17; Exhs. S-59B and S-65.

28 <sup>69</sup> Tr. 251:1-9.

<sup>70</sup> Tr. 255:12-256:8; Exhs. S-65 and S-121.

<sup>71</sup> Tr. 255:21-22; Exh. S-121.

<sup>72</sup> Tr. 260:1-10; Exhs. S-65 and S-122.

<sup>73</sup> Tr. 261:4-7.

<sup>74</sup> Tr. 262:3-13; Exh. S-123.

1 amount of \$3,987.50.<sup>75</sup> Mr. Maturo further testified that Sanchez did not disclose prior judgments  
2 against him or his conviction for fraud at or near the time Mr. Maturo made this investment.<sup>76</sup>

3 Mr. Maturo testified that CoverLugg's Articles of Organization, dated August 30, 2010, lists  
4 Sanchez and Mr. Goins as managers.<sup>77</sup>

5 Mr. Maturo testified that he first learned of Sanchez's prior conviction after reading the Article  
6 shortly after it was published.<sup>78</sup> Mr. Maturo further testified that, because of Sanchez's prior  
7 conviction, it was in the best interest of the company to have Sanchez removed from all management  
8 of FoneFace.<sup>79</sup> Mr. Maturo testified that on August 6, 2014, he replaced Sanchez as manager of  
9 FoneFace.<sup>80</sup>

10 Mr. Maturo testified that he invested a total of \$383,500 in FoneFace and did not receive any  
11 return on his investment.<sup>81</sup>

12 Mr. Maturo testified that he first learned of prior judgments against Sanchez in 2016 when the  
13 Division first contacted him.<sup>82</sup>

14 **D. Avi S. Beliak**

15 Mr. Beliak testified that he is a forensic accountant for the Division and that he prepared a  
16 summary of investments in CoverLugg, FoneFace, and Birdie Media from February 9, 2011, through  
17 March 28, 2016.<sup>83</sup>

18 Mr. Beliak testified that 30 investors made 47 investments of a "little bit more than \$2,006,000"  
19 into CoverLugg, FoneFace, and Birdie Media.<sup>84</sup> Specifically, Mr. Beliak testified that 14 investors  
20 made 18 investments of \$1.14 million into CoverLugg, 11 investors made 22 investments of \$678,000  
21 into FoneFace, and 6 investors made 7 investments of \$185,000 into Birdie Media.<sup>85</sup> Mr. Beliak further  
22

23 <sup>75</sup> Tr. 263:8-21; Exh. S-96.

24 <sup>76</sup> Tr. 264:22-265:9.

25 <sup>77</sup> Tr. 264:1-9; Exh. S-2.

26 <sup>78</sup> Tr. 271:6-25.

27 <sup>79</sup> Tr. 274:3-12.

28 <sup>80</sup> Tr. 274:15-24; Exh. S-3B.

<sup>81</sup> Tr. 275:25-276:5; Exh. S-124.

<sup>82</sup> Tr. 311:19-312:4.

<sup>83</sup> Tr. 321:17-22; Exh. S-101.

<sup>84</sup> Tr. 322:3-14; Exh. S-101.

<sup>85</sup> Tr. 322:19-323:7; Exh. S-101.

1 testified that he did not see any principal repayments to any of the investors.<sup>86</sup>

2 Mr. Beliak testified that the investments into CoverLugg covered the period of February 9,  
3 2011, through April 10, 2012.<sup>87</sup> Mr. Beliak testified that the investments into FoneFace covered the  
4 period of April 26, 2013, through January 8, 2014, and that 3 of the investments occurred after August  
5 2013.<sup>88</sup> Mr. Beliak testified that the investments in Birdie Media covered the period of September 2,  
6 2014, through March 28, 2016, and that 3 of the investments occurred after June 22, 2015.<sup>89</sup>

7 Mr. Beliak testified that he prepared a summary that lists the payments from CoverLugg to  
8 Sandbox Creative, L.L.C. ("Sandbox") from April 2011 to August 2014.<sup>90</sup> Specifically, Mr. Beliak  
9 testified that payments from CoverLugg to Sandbox totaled approximately \$225,000 and that payments  
10 from Sandbox to CoverLugg totaled approximately \$40,000, for total net payments from CoverLugg  
11 to Sandbox of approximately \$184,000.<sup>91</sup>

#### 12 **E. Michael L. Basten**

13 Mr. Basten testified that he was introduced to Sanchez when a mutual friend, Ken Crenshaw,  
14 emailed Mr. Basten about an investment opportunity on August 13, 2011 ("August 13, 2011, email").<sup>92</sup>  
15 Mr. Basten testified that the August 13, 2011, email included an attached email from Sanchez to Mr.  
16 Crenshaw dated August 1, 2011 ("August 1, 2011, email").<sup>93</sup>

17 Mr. Basten testified that in the August 1, 2011, email, Sanchez states that "USPO [United States  
18 Patent and Trademark Office] issued our patents for Coverlugg."<sup>94</sup> Mr. Basten testified that he  
19 interpreted this to mean that the patents for the product were CoverLugg's property.<sup>95</sup>

20 Mr. Basten testified that roughly a week after receiving the August 13, 2011, email, he met  
21 Sanchez at Sanchez's office in Chandler.<sup>96</sup> Mr. Basten testified that they discussed the investment  
22 opportunity in CoverLugg, including the licensing agreements with numerous sports organizations.

23 <sup>86</sup> Tr. 323:8-17.

24 <sup>87</sup> Tr. 324:10-15; Exh. S-101.

25 <sup>88</sup> Tr. 324:19-325:3; Exh. S-101.

26 <sup>89</sup> Tr. 325:6-13; Exh. S-101.

27 <sup>90</sup> Tr. 326:2-7; Exh. S-125.

28 <sup>91</sup> Tr. 326:9-18; Exh. S-125.

<sup>92</sup> Tr. 416:23-471:10; Exh. S-35.

<sup>93</sup> Tr. 417:23-418:8; Exh. S-35.

<sup>94</sup> Tr. 418:17-22; Exh. S-35.

<sup>95</sup> Tr. 418:23-25.

<sup>96</sup> Tr. 419:13-25.

1 Mr. Basten testified that Sanchez stated that the primary purpose of the investment was to raise  
 2 \$350,000 to fulfill purchase orders.<sup>97</sup> Mr. Basten testified that he asked Sanchez to send him copies of  
 3 purchase orders to validate them.<sup>98</sup> Mr. Basten further testified that he reviewed two CoverLugg  
 4 purchase orders for Luggage Jacket, LLC ("Luggage Jacket") ("CoverLugg purchase orders") and that  
 5 he questioned Sanchez about them because, while they each had a unique purchase order number, they  
 6 were both dated July 27, 2011, and were both in the amount of \$82,175.<sup>99</sup> Mr. Basten testified that  
 7 Sanchez responded that this was typical of big orders.<sup>100</sup>

8 Mr. Basten testified that he and his wife had another meeting with Sanchez in September  
 9 2011.<sup>101</sup> Mr. Basten testified that during this meeting Sanchez indicated that he had a licensing  
 10 agreement with Disney.<sup>102</sup> Mr. Basten further testified that he received the 2011 CoverLugg product  
 11 catalog, which included a Disney product line for children.<sup>103</sup> Mr. Basten testified that this supported  
 12 his belief that CoverLugg had licensing agreements with Disney.<sup>104</sup>

13 Mr. Basten testified that in the August 1, 2011, email, Sanchez states that CoverLugg "[c]ame  
 14 to an agreement with Denco which will allow us to manufacture, distribute and sell NCAA, MLB,  
 15 NBA & NHL Coverluggs."<sup>105</sup> Mr. Basten testified that this was one of the things that enticed him to  
 16 invest in CoverLugg.<sup>106</sup>

17 Mr. Basten testified that on September 29, 2011, he invested \$200,000 via a wire transfer in  
 18 exchange for a 8.5% membership interest in CoverLugg.<sup>107</sup>

19 Mr. Basten testified that he reviewed CoverLugg's Sales by Customer Summary for January  
 20 through December 2011.<sup>108</sup> Mr. Basten testified that the Sales by Customer Summary does not indicate  
 21 any deals with Denco, Disney, or sports organizations.<sup>109</sup> Mr. Basten further testified that the Sales by

22 <sup>97</sup> Tr. 420:18-421:6.

23 <sup>98</sup> Tr. 421:1-6.

24 <sup>99</sup> Tr. 421:20-24; Tr. 423:3-424:2; Exh. S-117.

25 <sup>100</sup> Tr. 424:5-8.

26 <sup>101</sup> Tr. 426:13-23.

27 <sup>102</sup> Tr. 427:1-19.

28 <sup>103</sup> Tr. 428:10-19; Exh. S-46.

<sup>104</sup> Tr. 428:23-429:1.

<sup>105</sup> Tr. 431:14-17; Exh. S-35.

<sup>106</sup> Tr. 431:18-20.

<sup>107</sup> Tr. 433:8-434:13; Exh. S-28.

<sup>108</sup> Tr. 424:17-19; Exh. S-119.

<sup>109</sup> Tr. 430:20-431:23; Exh. S-119.

1 Customer Summary does not support the CoverLugg purchase orders and that he believes them to be  
2 fictitious.<sup>110</sup>

3 Mr. Basten testified that prior to investing, it was not disclosed to him that Mr. Goins had a  
4 felony conviction for fraud or that Sanchez had several judgments ordered against him.<sup>111</sup>

5 Mr. Basten testified that he was listed as a member of CoverLugg's membership committee.<sup>112</sup>  
6 Mr. Basten further testified that when the committee members got together it was not an actual board  
7 meeting, but rather an update given by Sanchez on how the business was doing.<sup>113</sup> Mr. Basten testified  
8 that at these meetings he never voted on anything and did not have any decision-making authority.<sup>114</sup>

9 Mr. Basten testified that Sanchez told him that CoverLugg had direct licensing agreements with  
10 various sports organizations.<sup>115</sup>

11 Mr. Basten testified that he assumed that the patents belonged to CoverLugg, but that he never  
12 heard Sanchez say whether the patents were in his name or the company's name.<sup>116</sup>

13 Mr. Basten testified that the 2011 CoverLugg product catalog states "Team licensing available  
14 soon."<sup>117</sup>

15 Mr. Basten testified that he believed that the CoverLugg purchase orders were fictitious, but  
16 that he never contacted Luggage Jacket, and that he based this opinion on information contained in  
17 CoverLugg's books.<sup>118</sup>

#### 18 **F. Jerry Lowe**

19 Mr. Lowe, the Division's lead investigator into this matter, testified that from July 1, 2010, to  
20 March 7, 2017, neither CoverLugg nor Sanchez was registered as a dealer or investment adviser with  
21 the Commission.<sup>119</sup> Mr. Lowe further testified that from July 1, 2014, to March 7, 2017, Birdie Media  
22 was not registered as a dealer or investment adviser with the Commission.<sup>120</sup> Mr. Lowe further testified

23 <sup>110</sup> Tr. 425:17-20.

24 <sup>111</sup> Tr. 434:14-435:7.

<sup>112</sup> Tr. 436:9-10.

25 <sup>113</sup> Tr. 436:11-20.

<sup>114</sup> Tr. 436:21-437:1; Tr. 448:18-20; Tr. 469:22-470:20.

26 <sup>115</sup> Tr. 465:20-466:5.

<sup>116</sup> Tr. 466:10-467:8.

27 <sup>117</sup> Tr. 468:22-24; Exh. S-46.

<sup>118</sup> Tr. 471:7-20.

28 <sup>119</sup> Tr. 334:15-335:3; Tr. 335:23-336:5; Exhs. S-1A and S-1D.

<sup>120</sup> Tr. 335:6-15; Exh. S-1B.

1 that from April 1, 2012, to March 9, 2017, FoneFace was not registered as a dealer or investment  
2 adviser with the Commission.<sup>121</sup>

3 Mr. Lowe testified that Birdie Media's Articles of Organization, dated September 3, 2014, lists  
4 Sanchez as the manager and statutory agent for Birdie Media.<sup>122</sup>

5 Mr. Lowe testified that he spoke with Diane Maier, who indicated that her neighbor, Mr. Hebert,  
6 introduced her to Sanchez.<sup>123</sup> Mr. Lowe testified that on April 6, 2012, Ms. Maier and Sanchez  
7 executed a Purchase Agreement wherein Ms. Maier agreed to invest \$100,000 in exchange for 25,000  
8 units, or a 2.5% membership interest in CoverLugg.<sup>124</sup> Mr. Lowe testified that on August 10, 2012,  
9 Ms. Maier invested \$100,000 in CoverLugg via a wire transfer.<sup>125</sup>

10 Mr. Lowe testified that Ms. Maier indicated that she was expecting to receive a 2½ percent  
11 equity interest in CoverLugg and that she said that she thought she would get her money back within a  
12 year.<sup>126</sup> Mr. Lowe further testified that Ms. Maier was unaware of the judgments against Sanchez prior  
13 to investing in CoverLugg.<sup>127</sup>

14 Mr. Lowe testified that he spoke with Charles Zis, who also was referred to Sanchez by Mr.  
15 Hebert.<sup>128</sup> Mr. Lowe testified that Mr. Zis and Sanchez executed a Unit Purchase Agreement, dated  
16 April 6, 2012, wherein Mr. Zis agreed to invest \$250,000 in exchange for 62,400 units, or a 6.25%  
17 membership interest in CoverLugg.<sup>129</sup> Mr. Lowe testified that on April 9, 2012, Mr. Zis invested  
18 \$250,000 in CoverLugg via a wire transfer.<sup>130</sup> Mr. Lowe testified that Mr. Zis indicated that he  
19 expected to get paid back within a year and that he was unaware of the judgments against Sanchez prior  
20 to investing in CoverLugg.<sup>131</sup>

21 Mr. Lowe testified that he spoke with Jerry Wigdortz, and that Mr. Wigdortz and Sanchez  
22 executed a Unit Purchase Agreement, dated July 1, 2013, wherein Mr. Wigdortz agreed to invest

23 <sup>121</sup> Tr. 335:16-22; Exh. S-1(C).

24 <sup>122</sup> Tr. 337:2-14; Exh. S-4.

25 <sup>123</sup> Tr. 350:4-7.

26 <sup>124</sup> Tr. 348:21-349:18; Exh. S-15.

27 <sup>125</sup> Tr. 355:6-17; Exh. S-21.

28 <sup>126</sup> Tr. 350:15-16; Tr. 351:7-10.

<sup>127</sup> Tr. 350:17-20.

<sup>128</sup> Tr. 353:12-18.

<sup>129</sup> Tr. 352:21-353:24; Exh. S-19.

<sup>130</sup> Tr. 361:7-15; Exh. S-32.

<sup>131</sup> Tr. 353:25-354:5.



1 \$50,000 in exchange for 22,316 units, or a 2% membership interest in FoneFace.<sup>132</sup> Mr. Lowe testified  
 2 that on July 10, 2013, Mr. Wigdortz invested \$50,000 in FoneFace via a wire transfer.<sup>133</sup> Mr. Lowe  
 3 testified that Mr. Wigdortz indicated that he was unaware of the judgments against Sanchez prior to  
 4 investing in FoneFace.<sup>134</sup>

5 Mr. Lowe testified that he spoke with Mike Cautin, who indicated that he and Sanchez executed  
 6 a Unit Purchase Agreement, dated July 2013, wherein Mr. Cautin agreed to invest \$25,000 in exchange  
 7 for 10,000 units in FoneFace.<sup>135</sup> Mr. Lowe testified that on July 23, 2013, Mr. Cautin invested \$25,000  
 8 in CoverLugg via a wire transfer.<sup>136</sup> Mr. Lowe testified that Mr. Cautin indicated that he was unaware  
 9 of the judgments against Sanchez prior to investing in FoneFace.<sup>137</sup>

10 Mr. Lowe testified that he spoke with Kevin Hill, who invested \$25,000 in FoneFace.<sup>138</sup> Mr.  
 11 Lowe further testified that Mr. Hill indicated that he was unaware of the judgments against Sanchez  
 12 prior to investing in FoneFace.<sup>139</sup>

13 Mr. Lowe testified that he spoke with S. Jason Conti, who invested \$30,000 in FoneFace.<sup>140</sup>  
 14 Mr. Lowe further testified that Mr. Conti indicated that he was unaware of the judgments against  
 15 Sanchez prior to investing in FoneFace.<sup>141</sup>

16 Mr. Lowe testified that he spoke with Susan Quilty, who invested \$25,000 in FoneFace.<sup>142</sup> Mr.  
 17 Lowe further testified that Ms. Quilty indicated that she was unaware of the judgments against Sanchez  
 18 or his criminal conviction prior to investing in FoneFace.<sup>143</sup>

19 Mr. Lowe testified that Birdie Media's Operating Agreement, dated June 2015, lists Sanchez,  
 20 Aaron DeCarlo, and Todd Crupper as members of the management committee.<sup>144</sup>

21 Mr. Lowe testified that he spoke with James Crupper, and that Mr. Crupper and Birdie Media

22 <sup>132</sup> Tr. 363:9-364:14; Exh. S-60.

23 <sup>133</sup> Tr. 372:16-21; Exh. S-67.

24 <sup>134</sup> Tr. 364:22-365:7.

25 <sup>135</sup> Tr. 365:9-17; Exh. S-61.

26 <sup>136</sup> Tr. 375:9-13; Exh. S-71.

27 <sup>137</sup> Tr. 366:7-10.

28 <sup>138</sup> Tr. 366:24-367:6; Tr. 377:20-378:3; Exh. S-75.

<sup>139</sup> Tr. 369:4-12.

<sup>140</sup> Tr. 373:5-23; Exh. S-68.

<sup>141</sup> Tr. 373:24-374:1.

<sup>142</sup> Tr. 376:18-377:10; Exh. S-74.

<sup>143</sup> Tr. 377:11-14.

<sup>144</sup> Tr. 378:8-379:5; Exh. S-76.

1 executed a Unit Purchase Agreement, dated June 22, 2015, wherein Mr. Crupper agreed to invest  
 2 \$75,000 in exchange for 200,000 units, or a 20% membership interest in Birdie Media.<sup>145</sup> Mr. Lowe  
 3 testified that on July 6, 2015, Mr. Crupper invested \$15,000 in Birdie Media via a check.<sup>146</sup> Mr. Lowe  
 4 testified that Mr. Crupper indicated that he was unaware of the judgments against Sanchez prior to  
 5 investing in Birdie Media.<sup>147</sup>

6 Mr. Lowe testified that he spoke with Suliman Suliman, and that on August 25, 2014, Mr.  
 7 Suliman and Birdie Media executed a Unit Purchase Agreement, dated August 25, 2014, wherein Mr.  
 8 Suliman agreed to invest \$15,000 in exchange for 150,000 units, or a 10% membership interest in  
 9 Birdie Media.<sup>148</sup> Mr. Lowe testified that on September 2, 2014, and November 10, 2014, Mr. Suliman  
 10 invested a total of \$15,000 in Birdie Media via two checks.<sup>149</sup> Mr. Lowe testified that Mr. Suliman  
 11 indicated that he was unaware of the judgments against Sanchez or his criminal conviction prior to  
 12 investing in Birdie Media.<sup>150</sup>

13 Mr. Lowe testified that he spoke with Robert Fraley, who invested \$75,000 in Birdie Media.<sup>151</sup>  
 14 Mr. Lowe further testified that Mr. Fraley indicated that he was unaware of the judgments against  
 15 Sanchez or his criminal conviction prior to investing in Birdie Media.<sup>152</sup>

16 Mr. Lowe also identified Unit Purchase Agreements between Sanchez and the following  
 17 investors: Kevin Dupont, dated October 28, 2011, wherein Mr. Dupont agreed to invest \$50,000 in  
 18 exchange for 50,000 units, or a 5% membership interest in CoverLugg; James Miller, dated October  
 19 28, 2011, wherein Mr. Miller agreed to invest \$50,000 in exchange for 25,000 units, or a 2.5%  
 20 membership interest in CoverLugg; Jeff Runyon, dated August 19, 2011, wherein Mr. Runyon agreed  
 21 to invest \$50,000 in exchange for 20,000 units, or a 2% membership interest in CoverLugg; and Ed  
 22 Marek, dated January 6, 2016, wherein Mr. Marek agreed to invest \$50,000 in exchange for 100,000  
 23 units, or 10% membership interest in Birdie Media.<sup>153</sup>

24 <sup>145</sup> Tr. 379:6-15; Exh. S-77.

25 <sup>146</sup> Tr. 385:9-13; Exh. S-83.

26 <sup>147</sup> Tr. 380:4-7.

27 <sup>148</sup> Tr. 382:8-16; Exh. S-80.

28 <sup>149</sup> Tr. 383:10-17; Exhs. S-81 and S-82.

<sup>150</sup> Tr. 383:1-4.

<sup>151</sup> Tr. 386:11-22; Exh. S-87.

<sup>152</sup> Tr. 387:23-387:1.

<sup>153</sup> Tr. 351:17-352:6; Tr. 352:9-20; Tr. 354:10-355:3; Tr. 382:1-4; Exhs. S-17, S-18, S-20, and S-79.

1 Mr. Lowe testified that Sanchez was indicted on August 16, 2013, and took a plea agreement  
 2 in the United States District Court.<sup>154</sup> Mr. Lowe further testified that Sanchez was ordered to pay  
 3 \$65,000 in restitution as a result of his conviction.<sup>155</sup>

4 Mr. Lowe testified that FoneFace's Operating Agreement is dated April 2013.<sup>156</sup>

5 Mr. Lowe testified that in addition to Mr. Zis and Ms. Maier, Clint Nichols indicated that he  
 6 expected to have his investment paid back within one year, but Mr. Lowe does not recall why these  
 7 investors had that expectation.<sup>157</sup>

#### 8 IV. Legal Argument

9 The Division contends that Respondents violated the registration and license requirements of  
 10 A.R.S. §§ 44-1841<sup>158</sup> and 44-1842<sup>159</sup> and the anti-fraud provisions of A.R.S. § 44-1991.<sup>160</sup>

11  
 12 <sup>154</sup> Tr. 387:6-22; Exhs. S-98A and S-98C.

13 <sup>155</sup> Tr. 389:6-13; Exh. S-98H.

14 <sup>156</sup> Yr. 390:23-391:1; Exh. S-58A.

15 <sup>157</sup> Tr. 490:8-20.

16 <sup>158</sup> A.R.S. § 44-1841 provides:

17 A. It is unlawful to sell or offer for sale within or from this state any securities unless the securities  
 18 have been registered pursuant to article 6 or 7 of this chapter or are federal covered securities if the  
 19 securities comply with section 44-1843.02 or chapter 13, article 12 of this title.

20 B. A person violating this section is guilty of a class 4 felony.

21 <sup>159</sup> A.R.S. § 44-1842 provides:

22 A. It is unlawful for any dealer to sell or purchase or offer to sell or buy any securities, or for any  
 23 salesman to sell or offer for sale any securities within or from this state unless the dealer or salesman  
 24 is registered as such pursuant to the provisions of article 9 of this chapter.

25 B. A person violating this section is guilty of a class 4 felony.

26 <sup>160</sup> A.R.S. § 44-1991 provides:

27 A. It is a fraudulent practice and unlawful for a person, in connection with a transaction or  
 28 transactions within or from this state involving an offer to sell or buy securities, or a sale or purchase  
 of securities, including securities exempted under section 44-1843 or 44-1843.01 and including  
 transactions exempted under section 44-1844, 44-1845 or 44-1850, directly or indirectly to do any  
 of the following:

1. Employ any device, scheme or artifice to defraud.

2. Make any untrue statement of material fact, or omit to state any material fact necessary  
 in order to make the statements made, in the light of the circumstances under which they  
 were made, not misleading.

3. Engage in any transaction, practice or course of business which operates or would  
 operate as a fraud or deceit.

B. In a private action brought pursuant to subsection A, paragraph 2 of this section or section 44-  
 1992, if the person who offered or sold the security proves that any portion or all of the amount  
 recoverable under subsection A, paragraph 2 of this section or section 44-1992 represents an amount  
 other than the depreciation in value of the subject security resulting from the part of the prospectus  
 or oral communication, with respect to which the liability of the person is asserted, not being true  
 or omitting to state a material fact required to be stated or necessary to make the statement not  
 misleading, then the amount shall not be recoverable. This subsection does not apply to any actions  
 based on allegations of activities constituting dishonest or unethical practices in the securities  
 industry.

1           **A.    A.R.S. § 44-1841**

2           The Division asserts that Respondents violated A.R.S. § 44-1841 because they offered and sold  
3           unregistered securities. The Division contends that Respondents' Unit Purchase Agreements and/or  
4           Share Purchase Agreements ("Agreements") are securities as defined by A.R.S. § 44-1801(26)<sup>161</sup>  
5           because they are investment contracts.<sup>162</sup> The Division further contends that the Agreements satisfy  
6           the United States Supreme Court's<sup>163</sup> definition of investment contracts because they are investments  
7           of money in a common enterprise with profits to come from the efforts of others.<sup>164</sup> Finally, the  
8           Division argues that FoneFace's Security Agreements and notes offered to Mr. Maturo by Sanchez are  
9           securities in the form of notes under the Act.<sup>165</sup>

10          Sanchez does not dispute that the Agreements are securities in the form of investments contracts  
11          or promissory notes, nor does he dispute that the Agreements are unregistered. Rather, Sanchez cites  
12          to the provision in the Agreements discussing "restricted securities," which states that the units have  
13          not been registered under the Act "upon a specific exemption therefrom."<sup>166</sup> Pursuant to A.R.S. § 44-  
14          2033,<sup>167</sup> it is Respondents' burden to prove any exemption from registration. Respondents, however,  
15          fail to cite or specify which exemption(s) apply to negate the requirement to register the securities.

16          Accordingly, based on the weight of the evidence, we find that Respondents violated A.R.S. §  
17          44-1841.

18  
19          <sup>161</sup> A.R.S. § 44-1801(26) provides:

20               "Security" means any note, stock, treasury stock, bond, commodity investment contract, commodity  
21               option, debenture, evidence of indebtedness, certificate of interest or participation in any profit-  
22               sharing agreement, collateral-trust certificate, preorganization certificate or subscription,  
23               transferable share, investment contract, viatical or life settlement investment contract, voting-trust  
24               certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other  
25               mineral rights, real property investment contract or, in general, any interest or instrument commonly  
26               known as a "security", or any certificate of interest or participation in, temporary or interim  
27               certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the  
28               foregoing.

29          <sup>162</sup> Division Post-Hearing Brief at 33.

30          <sup>163</sup> *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946).

31          <sup>164</sup> Division Post-Hearing Brief at 33-37.

32          <sup>165</sup> Division Post-Hearing Brief at 37-38.

33          <sup>166</sup> Respondents Post-Hearing Brief Response at 3-4; *See, e.g.*, Exh. S-15.

34          <sup>167</sup> A.R.S. § 44-2033 provides:

35               In any action, civil or criminal, when a defense is based upon any exemption provided for in this  
36               chapter, the burden of proving the existence of the exemption shall be upon the party raising the  
37               defense, and it shall not be necessary to negative the exemption in any petition, complaint,  
38               information or indictment, laid or brought in any proceeding under this chapter.

**B. A.R.S. § 44-1842**

The Division asserts that Respondents violated A.R.S. § 44-1842 because they were not registered as dealers or salesmen.<sup>168</sup> It is undisputed that Respondents were unregistered.<sup>169</sup> Respondents failed to cite with specificity what exemption(s), if any, apply that would excuse them from having to register with the Commission.

Accordingly, based on the weight of the evidence, we find that Respondents violated A.R.S. § 44-1842.

**C. A.R.S. § 44-1991(A)**

The Division asserts that Respondents violated A.R.S. § 44-1991(A) because they made material misrepresentations to investors.<sup>170</sup> Specifically, the Division contends that Respondents:

- Failed to disclose to CoverLugg investors that on February 2, 2001, Mr. Goins pled guilty to violating 18 U.S.C. § 1343 (Fraud by wire, radio, or television);<sup>171</sup>
- Failed to disclose prior judgments against Sanchez;
- Misrepresented to at least three CoverLugg investors that the CoverLugg patents were held in the company's name as opposed to in Sanchez's name;
- Misrepresented the offer received during the taping of the show *Shark Tank* to at least one CoverLugg investor;
- Misrepresented to at least one CoverLugg investor that in 2011 CoverLugg had licensing agreements with Disney and certain sports organizations;<sup>172</sup>
- Misrepresented the authenticity of the July 2011 Luggage Jacket Purchase Orders to at

<sup>168</sup> Division Post-Hearing Brief at 40.

<sup>169</sup> Exhs. S-1A, S-1B, and S-1D.

<sup>170</sup> Division Post-Hearing Brief at 40-44.

<sup>171</sup> 18 U.S.C. § 1343 provides:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

<sup>172</sup> MLB, MLS, NASCAR, NCAA, NBA, NFL, and NHL.



1 least one CoverLugg investor;<sup>173</sup>

- 2 • Misrepresented to at least three CoverLugg investors that they would receive a return
- 3 on their investments within a year;
- 4 • Misrepresented to at least one CoverLugg investor that CoverLugg had tremendous
- 5 success in early 2011;
- 6 • Failed to disclose to FoneFace and Birdie Media investors that on August 16, 2013,
- 7 Sanchez pled guilty to violating 18 U.S.C. §§ 371 (Conspiracy to commit offense or to
- 8 defraud United States)<sup>174</sup> and 1344 (Bank fraud);<sup>175</sup> and
- 9 • Failed to disclose to Birdie Media investors that on June 29, 2015, Sanchez was
- 10 sentenced to five years' probation and ordered to pay restitution in the amount of
- 11 \$65,000.<sup>176</sup>

12 Sanchez denies that he misled or misrepresented any fact "to any investor at any time."<sup>177</sup>

13 Specific to the Division's allegations, Sanchez contends that:

- 14 • He was unaware of any details of Mr. Goins' past troubles;<sup>178</sup>
- 15 • He never stated or implied that the CoverLugg patents did not belong to the
- 16 company;<sup>179</sup>
- 17 • He never told Mr. Espalin that the *Sharks* "were investing \$400,000 for 10% equity" in
- 18

19  
20 <sup>173</sup> Exh. S-117.

<sup>174</sup> 18 U.S.C. § 371 provides:

21 If two or more persons conspire either to commit any offense against the United States, or to defraud  
22 the United States, or any agency thereof in any manner or for any purpose, and one or more of such  
23 persons do any act to effect [sic] the object of the conspiracy, each shall be fined under this title or  
24 imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor  
only, the punishment for such conspiracy shall not exceed the maximum punishment provided for  
such misdemeanor.

<sup>175</sup> 18 U.S.C. § 1344 provides:

Whoever knowingly executes, or attempts to execute, a scheme or artifice—

(1) to defraud a financial institution; or

(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody  
or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;  
shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

<sup>176</sup> Division Post-Hearing Brief at 42-44.

<sup>177</sup> Respondents Post-Hearing Brief Response at 11.

<sup>178</sup> Respondents Post-Hearing Brief Response at 5.

<sup>179</sup> Respondents Post-Hearing Brief Response at 7.



CoverLugg;<sup>180</sup>

- He never stated or implied that CoverLugg had direct licensing with Disney or certain sports organizations;<sup>181</sup>
- The July 2011 Luggage Jacket purchase orders were not fictitious;<sup>182</sup>
- He never implied or stated when investors would receive a return on their investments;<sup>183</sup> and
- His plea agreement was executed nearly two years after CoverLugg's last investor invested in the company and that the \$65,000 restitution has been paid in full.<sup>184</sup>

An issuer of securities has an affirmative duty not to mislead potential investors.<sup>185</sup> Under A.R.S. § 44-1991(A)(2), a material fact is one that "would have assumed actual significance in the deliberations of the reasonable buyer."<sup>186</sup> The test does not require an omission or misstatement to actually have been significant to a particular buyer.<sup>187</sup> Materiality will also be found when there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available."<sup>188</sup>

We find that there is sufficient evidence in the record to support some of the Division's allegations. First, with respect to disclosing Mr. Goins' prior conviction, Sanchez stated in his February 4, 2016, Examination Under Oath ("EUO") that he was aware of Mr. Goins' fraud conviction right after it happened, and that he did not disclose the conviction to CoverLugg investors because he did not think it was relevant and he "wasn't going to embarrass him."<sup>189</sup> Second, Sanchez does not dispute that he failed to disclose prior judgments against him to potential investors.<sup>190</sup> Third, there is evidence in the record through Mr. Espalin's testimony that Sanchez misrepresented the offer received during

<sup>180</sup> Respondents Post-Hearing Brief Response at 6.

<sup>181</sup> *Id.*

<sup>182</sup> Respondents Post-Hearing Brief Response at 7.

<sup>183</sup> Respondents Post-Hearing Brief Response at 5.

<sup>184</sup> Respondents Post-Hearing Brief Response at 1.

<sup>185</sup> *Trimble v. Am. Sav. LW Ins. Co.*, 152 Ariz. 548, 553 (App. 1986).

<sup>186</sup> *Aaron v. Fromkin*, 196 Ariz. 224, 227 (App. 2000).

<sup>187</sup> *Hirsch v. Ariz. Corp. Comm'n*, 237 Ariz. 456, 466 (App. 2015).

<sup>188</sup> *Caruthers v. Underhill*, 230 Ariz. 513, 524 (App. 2012) (internal quotations omitted).

<sup>189</sup> Exh. S-6A at 37-38.

<sup>190</sup> Exh. S-6A at 86.

1 the taping of the show *Shark Tank*.<sup>191</sup> While Sanchez disputes Mr. Espalin's statement, there is nothing  
2 in the record that contradicts Mr. Espalin.

3 Fourth, with respect to the authenticity of the July 2011 Luggage Jacket purchase orders, Mr.  
4 Basten testified that he believed two CoverLugg purchase orders were fictitious.<sup>192</sup> Mr. Basten testified  
5 that the purchase orders were identical except for the purchase order number and that they were not  
6 reflected in CoverLugg's 2011 Sales by Customer Summary.<sup>193</sup> While Sanchez argues that the  
7 Purchase Orders are not fictitious, he fails to cite to any evidence in the record to support his assertion.  
8 The preponderance of the evidence supports Mr. Basten's conclusions.

9 Fifth, there is evidence in the record that Sanchez represented to at least four CoverLugg  
10 investors that they would receive a return on their investments within a year. Mr. Espalin testified that,  
11 based on representations by Sanchez, he expected to see profit dividends within 9 to 12 months.<sup>194</sup>  
12 Further, Mr. Lowe testified that Ms. Maier, Mr. Zis, and Mr. Nichols expected to get their money back  
13 within a year.<sup>195</sup> While Sanchez argues that he never implied or stated when investors would receive  
14 a return on their investments, he fails to cite to any evidence in the record to support his assertion.

15 Sixth, there is evidence in the record that Sanchez represented to at least one CoverLugg  
16 investor that CoverLugg had tremendous success in early 2011. Mr. Espalin testified that Sanchez told  
17 him that the financial proforma for CoverLugg was prepared by a CPA and that "it was based off of  
18 the tremendous success that he had had early on in 2011."<sup>196</sup> However, in his EUO, Sanchez admitted  
19 that CoverLugg had zero sales up until at least September 2011.<sup>197</sup>

20 Seventh, with respect to disclosing Sanchez's federal conviction, Mr. Espalin and Mr. Maturo  
21 testified that they first learned of Sanchez's prior conviction after reading the Article published on June  
22 5, 2014.<sup>198</sup> Further, Mr. Lowe testified that Mr. Hill, Ms. Quilty, Mr. Crupper, Mr. Suliman, and Mr.  
23 Fraley indicated that they did not have knowledge of Sanchez's conviction prior to investing.<sup>199</sup>

24 <sup>191</sup> Tr. 70:24-71:6.

25 <sup>192</sup> Tr. 425:12-20.

<sup>193</sup> Tr. 421:20-425:20; Exhs. S-117 and S-119.

26 <sup>194</sup> Tr. 55:8-56:4.

<sup>195</sup> Tr. 351:7-10; Tr. 353:25-354:2.

27 <sup>196</sup> Tr. 50:16-22; Exh. S-126.

<sup>197</sup> Exh. S-6A at 71-72.

28 <sup>198</sup> Tr. 103:2-5; Tr. 271:6-25.

<sup>199</sup> Tr. 368:4-8; Tr. 377:11-14; Tr. 380:4-7; Tr. 383:1-4; Tr. 386:23-387:1.

1 Sanchez argues that his plea agreement was executed nearly two years after CoverLugg's last investor  
2 invested in the company and that the \$65,000 restitution has been paid in full. While this may be true,  
3 it does not contradict the evidence that Sanchez did not disclose his conviction to CoverLugg investors,  
4 who first learned of the conviction after reading the Article in 2014, or to FoneFace and/or Birdie Media  
5 investors.

6 With respect to the CoverLugg patent, Mr. Espalin testified that at the *Shark Tank* taping,  
7 Sanchez indicated that he had secured a patent for his CoverLugg luggage cover product and further  
8 testified that he later learned that the patents were filed under Sanchez's name rather than being  
9 assigned to the company.<sup>200</sup> Additionally, Mr. Hebert testified that prior to investing, he had thought  
10 that the patents for CoverLugg were in the company's name.<sup>201</sup> Both investors, however, further  
11 testified that Sanchez never told them or implied that the patents did not belong to CoverLugg.<sup>202</sup> We  
12 find that while there is evidence that Sanchez indicated to investors that CoverLugg was patented, and  
13 that certain investors assumed that Sanchez meant the patents were held in the company's name, there  
14 is insufficient evidence to support the allegation that Sanchez misrepresented the exact nature of the  
15 patent.

16 Finally, with respect to the licensing agreements with Disney and certain sports organizations,  
17 Mr. Basten testified that he believed CoverLugg had licensing agreements with Disney and several  
18 sports organizations.<sup>203</sup> While Mr. Basten testified that Sanchez stated CoverLugg had direct licensing  
19 agreements with several sports organizations, he further testified that he based this opinion, in part, on  
20 descriptions in the 2011 CoverLugg product catalog displaying the product with images from Disney  
21 and several sports organizations as well as from the April 1, 2011, email from Sanchez to Mr.  
22 Crenshaw, wherein Sanchez states that the company "[c]ame to an agreement with Denco which will  
23 allow us to manufacture, distribute and sell NCAA, MLB, NBA & NHL Coverluggs."<sup>204</sup>

24 In his brief, Sanchez denies that he ever stated or implied that CoverLugg had direct licensing  
25 agreements with certain sports organizations. Sanchez disputes Mr. Basten's testimony by referencing

26 <sup>200</sup> Tr. 45:15-17; Tr. 46:14-47:24; Tr. 64:2-65:1; Exh. S-48.

27 <sup>201</sup> Tr. 181:22-182:9.

28 <sup>202</sup> Tr. 129:3-16; Tr. 189:1-12.

<sup>203</sup> Tr. 428:8-432:3.

<sup>204</sup> Tr. 431:14-17; Tr. 465:9-466:5; Exhs. S-35 and S-46.

1 the second page of the 2011 CoverLugg product catalog, which states “Team licensing available  
 2 soon.”<sup>205</sup> Sanchez also notes that Mr. Hebert testified that the company was pursuing licensing  
 3 agreements to sell team products.<sup>206</sup> While we find Mr. Basten to be credible and understand why he  
 4 would believe that CoverLugg had licensing agreements with Disney and certain sports organizations,  
 5 we find insufficient evidence to support that this belief was due to misrepresentations made by  
 6 Respondents. Rather, the evidence shows that Mr. Basten was influenced by pictures in the 2011  
 7 CoverLugg product catalog and a statement contained in an email to a third-party about an agreement  
 8 with Denco, a luggage manufacturer.

9 Accordingly, based on the weight of the evidence, we find that Respondents violated A.R.S. §  
 10 44-1991(A) by failing to disclose Mr. Goins’ prior conviction; failing to disclose prior judgments  
 11 against Sanchez; misrepresenting the nature of the Shark Tank offer; misrepresenting the Luggage-  
 12 Jacket purchase orders; misrepresenting how quickly investors would receive a return; misrepresenting  
 13 that CoverLugg had tremendous success in early 2011; and failing to disclose Sanchez’s conviction to  
 14 the Birdie Media and FoneFace investors.

#### 15 **D. Control Person Liability**

16 Under A.R.S. § 44-1999(B), “Every person who, directly or indirectly, controls any person  
 17 liable for a violation of section 44-1991 or 44-1992 is liable jointly and severally with and to the same  
 18 extent as the controlled person to any person to whom the controlled person is liable unless the  
 19 controlling person acted in good faith and did not directly or indirectly induce the act underlying the  
 20 action.” For the purposes of A.R.S. § 44-1999(B), a person may include an individual, corporation or  
 21 limited liability company.<sup>207</sup>

22 The Division contends that Sanchez is liable as a control person for the violations of the anti-  
 23 fraud provisions of the Act committed by CoverLugg and Birdie Media.<sup>208</sup> The evidence shows that  
 24 Sanchez was the founder and managing member of CoverLugg and Birdie Media, a signer on their  
 25 bank accounts, and handled their day-to-day operations.<sup>209</sup>

26 <sup>205</sup> Tr. 468:22-24; Exh. S-46.

27 <sup>206</sup> Tr. 179:4-10.

28 <sup>207</sup> A.R.S. § 44-1807(17).

<sup>208</sup> Division Post-Hearing Brief at 44-45.

<sup>209</sup> Exhs. S-2, S-4, S-9B, S-9D, S-10B, S-10D, S-14A, S-14B, S-14C, and S-76.

Sanchez argues that he did not have power to control CoverLugg, FoneFace, or Birdie Media because all three companies have executed Operating Agreements and are run by a Management Committee that includes a minimum of three members.<sup>210</sup> We are unpersuaded by this argument. First, an entity can have multiple control persons and a person only needs to be part of a control group to be considered a control person.<sup>211</sup> Sanchez was the Operating Manager and a member of the Management Committee of CoverLugg and Birdie Media.<sup>212</sup> Second, there is evidence that the membership committee never met or made decisions. Specifically, Mr. Espalin testified that there had been no meetings or decisions by the membership committee and Mr. Basten testified that he never voted on anything and did not have any decision-making authority.<sup>213</sup> Accordingly, we find that Sanchez is liable as a control person for the antifraud violations of the Act committed by CoverLugg and Birdie Media, pursuant to A.R.S. § 44-1999(B).

#### **E. Marital Community Liability**

The Division contends that the liabilities incurred by Sanchez from his violations of the Act are liabilities of his and Respondent Spouse's marital community.

The Commission has the authority to join a spouse in an action to determine the liability of the marital community.<sup>214</sup> With limited exceptions, all property acquired by either the husband or the wife during marriage is the community property of both husband and wife.<sup>215</sup> The Arizona Supreme Court

<sup>210</sup> Respondents Post-Hearing Brief Response at 11; Exhs. S-14, S-58, and S-76.

<sup>211</sup> *Eastern Vanguard Forex, Ltd. v. Ariz. Corp. Comm'n*, 206 Ariz. 399 (App. 2003).

<sup>212</sup> Exhs. S-2, S-4, S-14A, S-14B, S-14C, and S-76.

<sup>213</sup> Tr. 146:13-147:12; Tr. 436:11-437:1; Tr. 448:18-20; Tr. 469:22-470:20.

<sup>214</sup> A.R.S. § 44-2031(C) provides:

The commission may join the spouse in any action authorized by this chapter to determine the liability of the marital community. This subsection does not authorize the commission to join any individual who is divorced from the defendant at the time an action authorized by this chapter is filed.

A.R.S. § 44-3291(C) provides:

The commission may join the spouse in any action authorized by this chapter to determine the liability of the marital community. This subsection does not authorize the commission to join any individual who is divorced from the defendant at the time an action authorized by this chapter is filed.

<sup>215</sup> A.R.S. § 25-211 provides:

A. All property acquired by either husband or wife during the marriage is the community property of the husband and wife except for property that is:

1. Acquired by gift, devise or descent.

2. Acquired after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment.



1 has found that “the presumption of law is, in the absence of the contrary showing, that all property  
2 acquired and all business done and transacted during coverture, by either spouse, is for the  
3 community.”<sup>216</sup>

4 Under A.R.S. § 25-214(B), spouses have “equal management, control and disposition rights  
5 over their community property and have equal power to bind the community.”<sup>217</sup> Either spouse may  
6 contract debts or otherwise act for the benefit of the community except as prohibited under A.R.S. §  
7 25-214.<sup>218</sup> “[A] debt is incurred at the time of the actions that give rise to the debt.”<sup>219</sup> “In an action  
8 on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied:  
9 first, from the community property, and second, from the separate property of the spouse contracting  
10 the debt or obligation.”<sup>220</sup> “A debt incurred by a spouse during marriage is presumed to be a community

11 B. Notwithstanding subsection A, paragraph 2, service of a petition for dissolution of marriage, legal  
12 separation or annulment does not:

- 13 1. Alter the status of preexisting community property.
- 14 2. Change the status of community property used to acquire new property or the status of  
that new property as community property.
- 15 3. Alter the duties and rights of either spouse with respect to the management of community  
property except as prescribed pursuant to section 25-315, subsection A, paragraph 1,  
subdivision (a).

16 <sup>216</sup> *Johnson v. Johnson*, 131 Ariz. 38, 45, (1981), citing *Benson v. Hunter*, 23 Ariz. 132, 134-35, (1921).

17 <sup>217</sup> A.R.S. § 25-214 provides:

- 18 A. Each spouse has the sole management, control and disposition rights of each spouse's separate  
property.
- 19 B. The spouses have equal management, control and disposition rights over their community  
property and have equal power to bind the community.
- 20 C. Either spouse separately may acquire, manage, control or dispose of community property or bind  
the community, except that joinder of both spouses is required in any of the following cases:  
21 1. Any transaction for the acquisition, disposition or encumbrance of an interest in real  
property other than an unpatented mining claim or a lease of less than one year.  
22 2. Any transaction of guaranty, indemnity or suretyship.  
23 3. To bind the community, irrespective of any person's intent with respect to that binder,  
after service of a petition for dissolution of marriage, legal separation or annulment if the  
petition results in a decree of dissolution of marriage, legal separation or annulment.

24 <sup>218</sup> A.R.S. § 25-215 provides:

- 25 A. The separate property of a spouse shall not be liable for the separate debts or obligations of the  
other spouse, absent agreement of the property owner to the contrary.
- 26 B. The community property is liable for the premarital separate debts or other liabilities of a spouse,  
incurred after September 1, 1973 but only to the extent of the value of that spouse's contribution to  
the community property which would have been such spouse's separate property if single.
- 27 C. The community property is liable for a spouse's debts incurred outside of this state during the  
marriage which would have been community debts if incurred in this state.
- 28 D. Except as prohibited in section 25-214, either spouse may contract debts and otherwise act for  
the benefit of the community. In an action on such a debt or obligation the spouses shall be sued  
jointly and the debt or obligation shall be satisfied: first, from the community property, and second,  
from the separate property of the spouse contracting the debt or obligation.

<sup>219</sup> *Arab Monetary Fund v. Hashim*, 219 Ariz. 108, 111 (App. 2008).

<sup>220</sup> A.R.S. § 25-215(D).



obligation; a party contesting the community nature of a debt bears the burden of overcoming that presumption by clear and convincing evidence.”<sup>221</sup>

Sanchez and Respondent Spouse were married during the relevant time-period.<sup>222</sup> Neither Sanchez nor Respondent Spouse contested that the marital community is liable, and therefore failed to rebut the presumption that a debt incurred during marriage is a community obligation. Accordingly, we find that the marital community of Sanchez and Respondent Spouse is subject to liability resulting from this proceeding.

## **F. Remedies**

The Division contends that Respondents should be ordered to pay restitution and administrative penalties for violations of the Act.

### **1. Restitution**

The Division asserts that Respondents Sanchez and CoverLugg should pay restitution in the amount of \$1,143,090 to CoverLugg investors, Sanchez should pay restitution in the amount of \$678,500 to FoneFace investors, and Respondents Sanchez and Birdie Media should pay restitution in the amount of \$185,000 to Birdie Media investors.<sup>223</sup> The Commission has the authority to order restitution pursuant to A.R.S. § 44-2032.<sup>224</sup> The evidence of record supports the Division’s assertion that Respondents Sanchez and CoverLugg should pay restitution in the amount of \$1,143,090 to CoverLugg investors, Sanchez should pay restitution in the amount of \$678,500 to FoneFace investors, and Respondents Sanchez and Birdie Media should pay restitution in the amount of \$185,000 to Birdie Media investors.<sup>225</sup> Accordingly, the Respondents, including the marital community of Sanchez and

<sup>221</sup> *Hrudka v. Hrudka*, 186 Ariz. 84, 91-92 (App. 1995).

<sup>222</sup> Exh. S-6A at 10, 14, and 37.

<sup>223</sup> Division Post-Hearing Brief at 47.

<sup>224</sup> A.R.S. § 44-2032 provides, in pertinent part:

If it appears to the commission, either on complaint or otherwise, that any person has engaged in, is engaging in or is about to engage in any act, practice or transaction that constitutes a violation of this chapter, or any rule or order of the commission under this chapter, the commission, in its discretion may:

1. Issue an order directing such person to cease and desist from engaging in the act, practice or transaction, or doing any other act in furtherance of the act, practice or transaction, and to take appropriate affirmative action within a reasonable period of time, as prescribed by the commission, to correct the conditions resulting from the act, practice or transaction including, without limitation, a requirement to provide restitution as prescribed by rules of the commission. ...

<sup>225</sup> Exh. S-101.

Respondent Spouse, should be liable to jointly and severally pay restitution in the total amount of \$2,006,590, plus interest from the date judgment is entered in this matter to the date of repayment.<sup>226</sup>

## **2. Administrative Penalties**

Under A.R.S. § 44-2036(A), the Commission has authority to assess an administrative penalty of no more than \$5,000 for each violation of the Act committed.<sup>227</sup> The Division has demonstrated that Respondents engaged in 47 unregistered transactions by unregistered dealers; 18 investments by 14 CoverLugg investors, 22 investments by 11 FoneFace investors, and 7 investments by 6 Birdie Media investors.<sup>228</sup> In addition, the Division has met its burden to prove that, under A.R.S. § 44-1991, Sanchez and CoverLugg committed at least 13 violations, and that Sanchez and Birdie Media committed at least 5 violations. Based on the evidence of record, we find administrative penalties of \$100,000 against Sanchez and CoverLugg and \$50,000 against Birdie Media to be appropriate.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

## **FINDINGS OF FACT**

1. CoverLugg is a manager managed limited liability company formed by Sanchez on August 30, 2010, and located in Chandler, Arizona.<sup>229</sup> Sanchez is listed as the statutory agent and he and Troy Goins are listed as managers in CoverLugg's Articles of Organization.<sup>230</sup>

2. Neither Sanchez nor CoverLugg have been registered by the Commission as securities salesmen or dealers.<sup>231</sup>

3. FoneFace is a manager managed limited liability company formed by Sanchez on May 23, 2012, and located in Chandler, Arizona.<sup>232</sup> On August 6, 2014, Sanchez was removed as a manager

<sup>226</sup> Interest rate to be calculated at the time of judgment pursuant to A.R.S. § 44-1201.

<sup>227</sup> A.R.S. § 44-2036(A) provides:

A person who, in an administrative action, is found to have violated any provision of this chapter or any rule or order of the commission may be assessed an administrative penalty by the commission, after a hearing, in an amount of not to exceed five thousand dollars for each violation.

<sup>228</sup> Exh. S-101.

<sup>229</sup> Exh. S-2.

<sup>230</sup> *Id.*

<sup>231</sup> Exhs. S-1A and S-1D.

<sup>232</sup> Exh. S-3A.

1 of FoneFace.<sup>233</sup>

2 4. Birdie Media is a manager managed limited liability company formed by Sanchez on  
3 September 3, 2014, and located in Chandler, Arizona.<sup>234</sup> Sanchez is listed as the statutory agent in  
4 Birdie Media's Articles of Organization.<sup>235</sup>

5 5. Birdie Media has not been registered by the Commission as a securities salesman or  
6 dealer.<sup>236</sup>

7 6. At all relevant times, Sanchez was a married man and a resident of Arizona.<sup>237</sup>  
8 Respondent Spouse was joined in this action under A.R.S. §§ 44-2031(C) and 44-3291(C) solely for  
9 the purpose of determining the liability of the marital community.

10 7. On February 2, 2001, Troy Goins pled guilty to violating 18 U.S.C. § 1343 (Fraud by  
11 wire, radio, or television).<sup>238</sup> On July 17, 2002, Mr. Goins was sentenced to one year and a day in  
12 prison, three years of supervised release, and ordered to pay restitution in the amount of \$178,000.<sup>239</sup>

13 8. On September 11, 2009, a default judgment in San Tan Justice Court was issued against  
14 Sanchez and Respondent Spouse in the principal amount of \$4,726.92.<sup>240</sup>

15 9. On December 23, 2009, a default judgment in McDowell Mountain Justice Court was  
16 issued against Sanchez and Respondent Spouse in the principal amount of \$1,158.72.<sup>241</sup>

17 10. On January 4, 2010, a judgment in Maricopa County Superior Court was issued against  
18 Sanchez and Respondent Spouse in the principal amount of \$54,190.51.<sup>242</sup>

19 11. On June 14, 2010, a default judgment in Maricopa County Superior Court was issued  
20 against Sanchez and Respondent Spouse for violating the Arizona Uniform Fraudulent Transfer Act  
21 (A.R.S. § 44-1001 *et seq.*).<sup>243</sup>

22 12. On June 27, 2011, a default judgment in San Marcos Justice Court was issued against

23 <sup>233</sup> Exh. S-3B.

24 <sup>234</sup> Exh. S-4.

<sup>235</sup> *Id.*

25 <sup>236</sup> Exh. S-1B.

<sup>237</sup> Exh. S-6A at 10, 14, and 37.

26 <sup>238</sup> Exh. S-99.

<sup>239</sup> *Id.*

27 <sup>240</sup> Exh. S-92.

<sup>241</sup> Exh. S-93.

<sup>242</sup> Exh. S-90A

28 <sup>243</sup> Exh. S-91A.

1 Sanchez and Respondent Spouse in the principal amount of \$6,416.44.<sup>244</sup>

2 13. On April 11, 2012, a default judgment in Maricopa County Superior Court was issued  
3 against Sanchez and Respondent Spouse in the principal amount of \$30,722.01.<sup>245</sup>

4 14. On August 16, 2013, Sanchez pled guilty to violating 18 U.S.C. §§ 371 and 1344  
5 (Conspiracy to commit bank fraud), a Class D felony.<sup>246</sup> On June 29, 2015, Sanchez was sentenced to  
6 five years' probation and ordered to pay restitution in the amount of \$65,000.<sup>247</sup>

7 15. On May 19, 2014, a default judgment in San Marcos Justice Court was issued against  
8 CoverLugg in the principal amount of \$3,987.50.<sup>248</sup>

9 16. On March 14, 2016, Mr. Espalin was awarded a judgment against Sanchez, Respondent  
10 Spouse, and CoverLugg in the principal amount of \$246,000.<sup>249</sup>

11 17. Between February 9, 2011, and April 10, 2012, fourteen (14) investors made 18  
12 investments for a total of \$1,143,090 in exchange for CoverLugg Investment Contracts, in the form of  
13 Unit Purchase Agreements or Share Purchase Agreements.<sup>250</sup>

14 18. Between April 26, 2013, and June 2, 2014, eleven (11) investors made 22 investments  
15 for a total of \$678,500 in exchange for FoneFace Investment Contracts and/or Notes, in the form of  
16 Unit Purchase Agreements or Security Agreements.<sup>251</sup>

17 19. Between September 2, 2014, and March 28, 2016, six (6) investors made 7 investments  
18 for a total of \$185,000 in exchange for Birdie Media Investment Contracts, in the form of Unit Purchase  
19 Agreements.<sup>252</sup>

20 20. The Investment Contracts and/or Notes are securities under the Act and none of the  
21 securities were registered with Commission.<sup>253</sup>

22 21. The Investment Contracts and/or Notes were sold in or from Arizona.

23  
24 <sup>244</sup> Exh. S-95.

<sup>245</sup> Exh. S-94.

25 <sup>246</sup> Exh. S-98C.

<sup>247</sup> Exh. S-98H.

26 <sup>248</sup> Exh. S-96.

<sup>249</sup> Exh. S-89A.

27 <sup>250</sup> Exh. S-101.

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

28 <sup>253</sup> Exhs. S-1A, S-1B, S-1C, and S-1D.

22. None of the investors have received any return on their investments.<sup>254</sup>

23. Respondents Sanchez and CoverLugg failed to disclose to at least 3 potential CoverLugg investors that Mr. Goins had a prior criminal conviction.<sup>255</sup>

24. Sanchez failed to disclose to at least 13 potential investors that prior judgments that had been filed against him.<sup>256</sup>

25. Sanchez failed to disclose to at least 5 potential investors that he had a prior criminal conviction for bank fraud.<sup>257</sup>

26. Two CoverLugg purchase orders with Luggage Jacket, dated July 27, 2011, were fictitious and not reflected in CoverLugg's 2011 Sales by Customer Summary.<sup>258</sup>

27. Sanchez represented to at least three CoverLugg investors that they would receive a return on their investments within a year.<sup>259</sup>

28. These findings of fact are based upon the Discussion above, and those findings are also incorporated herein.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801, *et. seq.*

2. The findings contained in the Discussion above are incorporated herein.

3. Respondents offered and sold securities in Arizona within the meaning of A.R.S. § 44-1801.

4. Respondents failed to meet their burden of proof pursuant to A.R.S. § 44-2033 to establish that the securities offered and sold were exempt from regulation under the Act.

5. Respondents violated A.R.S. § 44-1841 by offering and selling unregistered securities in Arizona.

6. Respondents violated A.R.S. § 44-1842 by offering and selling securities in Arizona

<sup>254</sup> Tr. 323:8-17.

<sup>255</sup> Tr. 63:18-22; Tr. 184:11-14; Tr. 434:14-18.

<sup>256</sup> Tr. 62:2-5; Tr. 183:17-21; Tr. 245:3-7; Tr. 350:17-20; Tr. 380:4-7; Tr. 383:1-4; Tr. 386:23-387:1; Tr. 435:3-7.

<sup>257</sup> Tr. 103:2-5; Tr. 271:6-25; Tr. 368:4-8; Tr. 377:11-14; Tr. 380:4-7; Tr. 383:1-4; Tr. 386:23-387:1.

<sup>258</sup> Tr. 421:20-425:20; Exhs. S-117 and S-119.

<sup>259</sup> Tr. 55:8-56:4; Tr. 351:7-10; Tr. 353:25-354:2.

1 while not being registered as dealers or salesmen.

2 7. Respondents committed fraud in the offer and sale of securities in violation of A.R.S. §  
3 44-1991.

4 8. Sanchez directly or indirectly controlled CoverLugg and Birdie Media, within the  
5 meaning of A.R.S. § 44-1999, and is jointly and severally liable with CoverLugg and Birdie Media,  
6 for violations of A.R.S. § 44-1991.

7 9. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-  
8 2032.

9 10. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-  
10 2032 and A.A.C. R14-4-308, for which the marital community of Sanchez and Respondent Spouse  
11 should be jointly and severally liable subject to the limitations of A.R.S. § 25-215.

12 11. Respondents' conduct is grounds for an administrative penalty pursuant to A.R.S. § 44-  
13 2036, for which the marital community of Sanchez and Respondent Spouse should be jointly and  
14 severally liable subject to the limitations of A.R.S. § 25-215.

15 **ORDER**

16 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under  
17 A.R.S. § 44-2032, Respondents CoverLugg LLC, Birdie Media LLC and Gregory J. Sanchez shall  
18 cease and desist from their actions, as described above, in violation of A.R.S. §§ 44-1841, 1842, and  
19 44-1991.

20 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
21 A.R.S. § 44-2032, Respondents CoverLugg LLC and Gregory J. Sanchez, individually, and (to the  
22 extent allowable pursuant to A.R.S. § 25-215) the marital community of Gregory J. Sanchez and Jill  
23 K. Sanchez, jointly and severally, shall make restitution in the amount of \$1,143,090, payable to the  
24 Arizona Corporation Commission within 90 days of the effective date of this Decision. Such restitution  
25 shall be made pursuant to A.A.C. R14-4-308 subject to legal setoffs by the Respondents and confirmed  
26 by the Director of Securities.

27 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
28 A.R.S. § 44-2032, Respondents Birdie Media LLC and Gregory J. Sanchez, individually, and (to the



1 extent allowable pursuant to A.R.S. § 25-215) the marital community of Gregory J. Sanchez and Jill  
2 K. Sanchez, jointly and severally, shall make restitution in the amount of \$185,000, payable to the  
3 Arizona Corporation Commission within 90 days of the effective date of this Decision. Such restitution  
4 shall be made pursuant to A.A.C. R14-4-308 subject to legal setoffs by the Respondents and confirmed  
5 by the Director of Securities.

6 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
7 A.R.S. § 44-2032, Respondent Gregory J. Sanchez, individually, and (to the extent allowable pursuant  
8 to A.R.S. § 25-215) the marital community of Gregory J. Sanchez and Jill K. Sanchez, jointly and  
9 severally, shall make restitution in the amount of \$678,500, payable to the Arizona Corporation  
10 Commission within 90 days of the effective date of this Decision. Such restitution shall be made  
11 pursuant to A.A.C. R14-4-308 subject to legal setoffs by the Respondents and confirmed by the  
12 Director of Securities.

13 IT IS FURTHER ORDERED that all ordered restitution payments shall be deposited into an  
14 interest-bearing account(s), if appropriate, until distributions are made.

15 IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the  
16 lesser of 10 percent *per annum*, or at a rate *per annum* that is equal to one percent plus the prime rate  
17 as published by the Board of Governors of the Federal Reserve System in Statistical Release H.15, or  
18 any publication that may supersede it, on the date that the judgment is entered.

19 IT IS FURTHER ORDERED that the Commission shall disburse the restitution funds on a *pro*  
20 *rata* basis to the investors shown on the records of the Commission. Any restitution funds that the  
21 Commission cannot disburse to an investor because the investor is deceased or an entity which invested  
22 is disallowed, shall be dispersed on a *pro rata* basis to the remaining investors shown on the records of  
23 the Commission. Any remaining funds that the Commission determines it is unable to or cannot  
24 feasibly disburse shall be transferred to the general fund of the State of Arizona.

25 IT IS FURTHER ORDERED that Respondents CoverLugg LLC and Gregory J. Sanchez,  
26 individually, and (to the extent allowable pursuant to A.R.S. § 25-215) the marital community of  
27 Gregory J. Sanchez and Jill K. Sanchez, jointly and severally, shall pay to the State of Arizona  
28 administrative penalties in the amount of \$100,000 for multiple violations of the Securities Act,

1 pursuant to A.R.S. § 44-2036. Said administrative penalties shall be payable by either cashier's check  
2 or money order payable to "the State of Arizona" and presented to the Arizona Corporation  
3 Commission for deposit in the general fund for the State of Arizona.

4 IT IS FURTHER ORDERED that Respondents Birdie Media LLC and Gregory J. Sanchez,  
5 individually, and (to the extent allowable pursuant to A.R.S. § 25-215) the marital community of  
6 Gregory J. Sanchez and Jill K. Sanchez, jointly and severally, shall pay to the State of Arizona  
7 administrative penalties in the amount of \$50,000 for multiple violations of the Securities Act, pursuant  
8 to A.R.S. § 44-2036. Said administrative penalties shall be payable by either cashier's check or money  
9 order payable to "the State of Arizona" and presented to the Arizona Corporation Commission for  
10 deposit in the general fund for the State of Arizona.

11 IT IS FURTHER ORDERED that the payment obligations for these administrative penalties  
12 shall be subordinate to the restitution obligations ordered herein and shall become immediately due and  
13 payable only after restitution payments have been paid in full or upon Respondents' default with respect  
14 to Respondents' restitution obligations.

15 IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalties  
16 ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of ten percent *per*  
17 *annum* or at a rate *per annum* that is equal to one percent plus the prime rate as published by the Board  
18 of Governors of the Federal Reserve System in Statistical Release H.15, or any publication that may  
19 supersede it on the date that the judgment is entered, may be deemed in default and shall be immediately  
20 due and payable, without further notice.

21 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, any  
22 outstanding balance shall be in default and shall be immediately due and payable without notice or  
23 demand. The acceptance of any partial or late payment by the Commission is not a waiver of default  
24 by the Commission.

25 IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission  
26 for its cost of collection and interest at the maximum legal rate.

27 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, the  
28 Commission may bring further legal proceedings against the Respondents including application to the

1 Superior Court for an order of contempt.

2 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application, the  
3 Commission may grant a rehearing of this Order. The application must be received by the Commission  
4 at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise ordered, filing  
5 an application for rehearing does not stay this Order. If the Commission does not grant a rehearing  
6 within twenty (20) calendar days after filing the application, the application is considered to be denied.  
7 No additional notice will be given of such denial.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

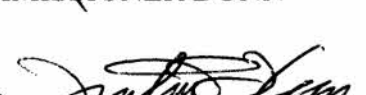
9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

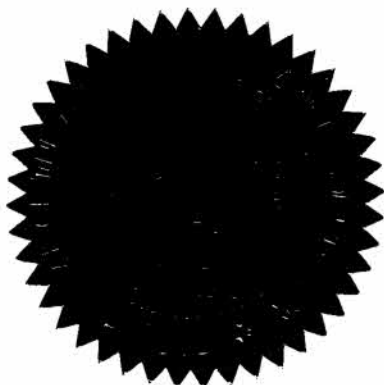
10  
11   
12 CHAIRMAN BURNS

  
COMMISSIONER DUNN

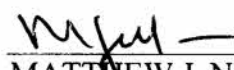
13   
14 COMMISSIONER TOBIN

  
COMMISSIONER KENNEDY

  
COMMISSIONER OLSON



20 IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT,  
21 Executive Director of the Arizona Corporation Commission,  
22 have hereunto set my hand and caused the official seal of the  
23 Commission to be affixed at the Capitol, in the City of Phoenix,  
24 this 7 day of February 2019.

25   
26 MATTHEW J. NEUBERT  
27 EXECUTIVE DIRECTOR

28  
DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
BDS/gb

SERVICE LIST FOR:

COVERLUGG LLC, BIRDIE MEDIA LLC,  
GREGORY J. SANCHEZ and JILL K. SANCHEZ,

DOCKET NO.:

S-20984A-16-0315

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**Consented to Service by Email**